

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

AMERICAN OVERSIGHT,
1030 15th Street NW, B255
Washington, DC 20005

Plaintiff,

v.

U.S. ENVIRONMENTAL PROTECTION
AGENCY,
1200 Pennsylvania Avenue NW
Washington, DC 20460

Defendant.

Case No. 17-1261

COMPLAINT

1. Plaintiff American Oversight brings this action against the Environmental Protection Agency under the Freedom of Information Act, 5 U.S.C. § 552 (FOIA), and the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, seeking declaratory and injunctive relief to compel compliance with the requirements of FOIA.

JURISDICTION AND VENUE

2. This Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. §§ 1331, 2201, and 2202.

3. Venue is proper in this district pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391(e).

4. Because Defendant has failed to comply with the applicable time-limit provisions of the FOIA, American Oversight is deemed to have exhausted its administrative remedies pursuant to 5 U.S.C. § 552(a)(6)(C)(i) and is now entitled to judicial action enjoining the agency

from continuing to withhold agency records and ordering the production of agency records improperly withheld.

PARTIES

5. Plaintiff American Oversight is a nonpartisan organization committed to the promotion of transparency in government, the education of the public about government activities, and ensuring the accountability of government officials. Through research and FOIA requests, American Oversight will use the information gathered, and its analysis of it, to educate the public about the activities and operations of the federal government through reports, published analyses, press releases, and other media. The organization is incorporated under the laws of the District of Columbia, and its application for section 501(c)(3) status is pending with the Internal Revenue Service.

6. Defendant Environmental Protection Agency (EPA) is an agency of the federal government within the meaning of 5 U.S.C. § 552(f)(1) headquartered in Washington, DC. EPA has possession, custody, and control of the records that American Oversight seeks.

STATEMENT OF FACTS

7. As described below, American Oversight filed two FOIA requests seeking documents that would shed light on a matter of significant public concern: the extent to which individuals associated with industry interests, such as fossil fuel firms, have access to the Trump administration and EPA and are influencing federal environmental protection regulations—including those that significantly affect their own firms.

8. Scott Pruitt was confirmed as Administrator of the Environmental Protection Agency in February 2017.

9. Mr. Pruitt previously served as the Attorney General of Oklahoma from January 2011 until February 2017. In February 2017, an Oklahoma judge ordered release of thousands of emails from Mr. Pruitt's official state email account. These emails show that during his tenure at attorney general, Mr. Pruitt coordinated closely with energy producers, utilities, and political groups, including holding secret meetings with industry executives and receiving materials aimed at weakening various federal environmental protection regulations.

10. Carl Icahn has reportedly been serving as a special adviser to President Trump on regulatory matters over the past several months and, according to multiple media reports, has provided input on certain environmental regulations that would significantly benefit his own company, CVR Energy Inc.

11. On May 24, 2017, *BloombergMarkets* reported that as a result of Mr. Icahn's role advising the Trump administration, CVR Energy Inc. has reaped substantial financial benefits and the value of Mr. Icahn's holdings in the company have increased significantly.

Pruitt Calendars & Logs FOIA

12. On April 5, 2017, American Oversight submitted a FOIA request ("Pruitt FOIA") to EPA seeking access to the following records:

- 1) All calendars or calendar entries for Scott Pruitt; Acting Deputy Administrator Mike Flynn; Acting Chief of Staff John Reeder; or any political or SES appointees in the Office of the Administrator, including any calendars maintained on behalf of these individuals (e.g., by an administrative assistant). For calendar entries created in Outlook or similar programs, the documents should be produced in "memo" form to include all invitees, any notes, and all attachments. Please do not limit your search to Outlook calendars—we request the production of any calendar—paper or electronic, whether on government-issued or personal devices—used to track or coordinate how these individuals allocate their time on agency business.
- 2) Any logs or other records tracking incoming and outgoing telephone calls made by Scott Pruitt, Acting Deputy Administrator Mike

Flynn, Acting Chief of Staff John Reeder, any political or SES appointees in the Office of the Administrator, or anyone placing or receiving telephone calls on behalf of those individuals.

The request sought records from February 17, 2017, to the date of the search. A copy of the Pruitt FOIA request is attached hereto as Exhibit A and incorporated herein.

13. EPA assigned the Pruitt FOIA request the tracking number EPA-HQ-2017-005777.

14. On May 17, 2017, EPA sent a letter to American Oversight granting American Oversight's request for a fee waiver under 40 C.F.R. § 2.107(l) in connection with the Pruitt FOIA request.

15. American Oversight has received no further communication from EPA regarding the processing of the Pruitt FOIA request.

Icahn FOIA

16. On April 5, 2017, American Oversight submitted a FOIA request ("Icahn FOIA") to EPA seeking access to the following records:

- 1) All communications between (1) any political or SES appointee in the Office of the Administrator (including but not limited to Scott Pruitt, Acting Deputy Administrator Mike Flynn, the Acting Chief of Staff John Reeder) or the Office of Air and Radiation (including but not limited to Acting Assistant Administrator Sarah Dunham), as well as anyone acting on behalf of those individuals, and (2) Carl Icahn; any individual acting on behalf of Mr. Icahn; any officer, director, or employee of Icahn Enterprises or CVR Energy, Inc.; or any individual acting on behalf of Icahn Enterprises or CVR Energy.
- 2) All communications between (1) any political or SES appointee in the Office of the Administrator (including but not limited to Scott Pruitt, Acting Deputy Administrator Mike Flynn, and Acting Chief of Staff John Reeder) or the Office of Air and Radiation (including but not limited to Acting Assistant Administrator Sarah Dunham), as well as anyone acting on behalf of those individuals, and (2) any officer, director, or employee of Valero Energy or anyone acting on behalf of Valero Energy.

The request sought records from February 17, 2017, to the date of the search. A copy of the Icahn FOIA request is attached hereto as Exhibit B and incorporated herein.

17. American Oversight sought expedited processing of its Icahn FOIA request under 40 C.F.R. § 2.104(e) and requested a waiver of fees associated with processing its request under 40 C.F.R. § 2.107(l).

18. EPA assigned the Icahn FOIA request the tracking number EPA-HQ-2017-005774.

19. On April 13, 2017, EPA sent American Oversight an email indicating that EPA required clarification of the Icahn FOIA request in order to process that request. Between April 17, 2017 and April 25, 2017, American Oversight clarified the scope of the Icahn FOIA request and negotiated with EPA regarding search terms to be used to identify responsive records.

20. On April 25, 2017, EPA confirmed its understanding of American Oversight's clarification and agreed to submit the search for processing.

21. On April 26, 2017, EPA granted American Oversight's request for expedited processing of the Icahn FOIA request and for waiver of fees associated with processing that request.

22. American Oversight has received no further communication from EPA regarding the processing of the Icahn FOIA request.

Exhaustion of Administrative Remedies

23. EPA has not responded to American Oversight's FOIA requests described in paragraphs 12 and 16, notwithstanding the obligation of the agency under FOIA to respond within twenty working days.

24. Through EPA's failure to respond to American Oversight's FOIA requests within the time period required by law, American Oversight has constructively exhausted its administrative remedies and seeks immediate judicial review.

COUNT I

Violation of FOIA, 5 U.S.C. § 552

Failure to Conduct Adequate Search for Records Responsive to Pruitt FOIA

25. American Oversight repeats the allegations in the foregoing paragraphs and incorporates them as though fully set forth herein.

26. American Oversight properly requested records within the possession, custody, and control of Defendant.

27. Defendant is an agency subject to FOIA and must therefore make reasonable efforts to search for requested records.

28. Defendant has failed to review promptly agency records for the purpose of locating those records which are responsive to American Oversight's Pruitt FOIA request.

29. Defendant's failure to conduct an adequate search for responsive records violates FOIA.

30. Plaintiff American Oversight is therefore entitled to injunctive and declaratory relief requiring Defendant to promptly make reasonable efforts to search for records responsive to American Oversight's Pruitt FOIA request.

COUNT II

Violation of FOIA, 5 U.S.C. § 552

Wrongful Withholding of Non-Exempt Records Responsive to Pruitt FOIA

31. American Oversight repeats the allegations in the foregoing paragraphs and incorporates them as though fully set forth herein.

32. American Oversight properly requested records within the possession, custody, and control of Defendant.

33. Defendant is an agency subject to FOIA and must therefore release in response to a FOIA request any disclosable records and provide a lawful reason for withholding any materials.

34. Defendant is wrongfully withholding agency records requested by American Oversight by failing to produce records responsive to its Pruitt FOIA request.

35. Defendant's failure to provide all responsive records violates FOIA.

36. Plaintiff American Oversight is therefore entitled to declaratory and injunctive relief requiring Defendant to promptly produce all non-exempt records responsive to its Pruitt FOIA request and provide indexes justifying the withholding of any responsive records withheld under claim of exemption.

COUNT III

Violation of FOIA, 5 U.S.C. § 552

Failure to Conduct Adequate Search for Records Responsive to Icahn FOIA

37. American Oversight repeats the allegations in the foregoing paragraphs and incorporates them as though fully set forth herein.

38. American Oversight properly requested records within the possession, custody, and control of Defendant.

39. Defendant is an agency subject to FOIA and must therefore make reasonable efforts to search for requested records.

40. Defendant has failed to review promptly agency records for the purpose of locating those records which are responsive to American Oversight's Icahn FOIA request.

41. Defendant's failure to conduct an adequate search for responsive records violates FOIA.

42. Plaintiff American Oversight is therefore entitled to injunctive and declaratory relief requiring Defendant to promptly make reasonable efforts to search for records responsive to American Oversight's Icahn FOIA request.

COUNT IV
Violation of FOIA, 5 U.S.C. § 552
Wrongful Withholding of Non-Exempt Records Responsive to Icahn FOIA

43. American Oversight repeats the allegations in the foregoing paragraphs and incorporates them as though fully set forth herein.

44. American Oversight properly requested records within the possession, custody, and control of Defendant.

45. Defendant is an agency subject to FOIA and must therefore release in response to a FOIA request any disclosable records and provide a lawful reason for withholding any materials.

46. Defendant is wrongfully withholding agency records requested by American Oversight by failing to produce records responsive to its Icahn FOIA request.

47. Defendant's failure to provide all responsive records violates FOIA.

48. Plaintiff American Oversight is therefore entitled to declaratory and injunctive relief requiring Defendant to promptly produce all non-exempt records responsive to its Icahn FOIA request and provide indexes justifying the withholding of any responsive records withheld under claim of exemption.

REQUESTED RELIEF

WHEREFORE, American Oversight respectfully requests the Court to:

- (1) Order Defendant to conduct a search reasonably calculated to uncover all records responsive to American Oversight's FOIA requests submitted to EPA on April 5, 2017;
- (2) Order Defendant to produce, within twenty days of the Court's order, or by such other date as the Court deems appropriate, any and all non-exempt records responsive to American Oversight's FOIA requests and indexes justifying the withholding of any responsive records withheld under claim of exemption;
- (3) Enjoin Defendant from continuing to withhold any and all non-exempt records responsive to American Oversight's FOIA requests;
- (4) Award American Oversight the costs of this proceeding, including reasonable attorneys' fees and other litigation costs reasonably incurred in this action, pursuant to 5 U.S.C. § 552(a)(4)(E); and
- (5) Grant American Oversight such other relief as the Court deems just and proper.

Dated: June 27, 2017

Respectfully submitted,

/s/ Sara Kaiser Creighton

Sara Kaiser Creighton

D.C. Bar No. 1002367

Elizabeth France

D.C. Bar No. 999851

John E. Bies

D.C. Bar No. 483730

AMERICAN OVERSIGHT

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Washington, DC 20005

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john.bies@americanoversight.org
Counsel for Plaintiff

Exhibit A



April 5, 2017

VIA ELECTRONIC MAIL

Records, FOIA, and Privacy Branch
Office of Environmental Information
Environmental Protection Agency
1200 Pennsylvania Avenue NW (2822T)
Washington, DC 20460
hq.foia@epa.gov

Re: Freedom of Information Act Request

Dear Freedom of Information Officer:

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552 et seq. and the implementing regulations for the Environmental Protection Agency (EPA), 40 C.F.R. Part 2, American Oversight makes the following request for records.

During his tenure as Oklahoma's Attorney General, Scott Pruitt reportedly used his official office as a conduit for industry interests to provide input into government decisionmaking, regularly consulting directly with fossil fuel firms regarding regulations affecting that industry.¹ Recent reports indicate that the Trump administration may be giving similar favored access and consideration to the fossil fuel industry: In recent months billionaire Carl Icahn has been serving as a special adviser to President Trump on regulatory matters,² and has reportedly provided input on certain environmental regulations that would significantly benefit his own company, CVR Energy Inc.³ Mr. Icahn reportedly has special access to the EPA on these matters.

¹ See, e.g., Coral Davenport & Eric Lipton, The Pruitt Emails: E.P.A. Chief Was Arm in Arm with Industry, N.Y. TIMES, Feb. 22, 2017, <https://www.nytimes.com/2017/02/22/us/politics/scott-pruitt-environmental-protection-agency.html>; Brady Dennis & Steven Mufson, Thousands of Emails Detail EPA Head's Close Ties to Fossil Fuel Industry, WASH. POST, Feb. 22, 2017, https://www.washingtonpost.com/news/energy-environment/wp/2017/02/22/oklahoma-attorney-generals-office-releases-7500-pages-of-emails-between-scott-pruitt-and-fossil-fuel-industry/?utm_term=.187c5a8084fb; Natasha Geiling, Scott Pruitt's Record Reveals a Long History of Industry Favoritism, THINKPROGRESS, Jan. 18, 2017, <https://thinkprogress.org/scott-pruitt-epa-oklahoma-record-386f13c8cc1d#.kfhqkxuwc>.

² Chris Isidore, Trump Taps Carl Icahn for Regulations Busting Post, CNNMONEY (Dec. 21, 2016, 5:36 PM), <http://money.cnn.com/2016/12/21/news/economy/donald-trump-carl-icahn/?iid=EL>.

³ See, e.g., Jennifer Dlouhy & Mario Parker, Trump Said to Consider Biofuel Plan Between Icahn, Ethanol Group, BLOOMBERG (Feb. 27, 2017, 8:50 PM), <https://www.bloomberg.com/news/articles/2017-02-28/trump-said-to-consider-biofuel-plan-between-icahn-ethanol-group>.



American Oversight is seeking information to determine the scope of access Mr. Pruitt and the EPA have provided to industry groups and others with a stake in environmental regulation.

Requested Records

American Oversight requests that EPA produce the following within twenty business days:

1. All calendars or calendar entries for Scott Pruitt; Acting Deputy Administrator Mike Flynn; Acting Chief of Staff John Reeder; or any political or SES appointees in the Office of the Administrator, including any calendars maintained on behalf of these individuals (e.g., by an administrative assistant). For calendar entries created in Outlook or similar programs, the documents should be produced in “memo” form to include all invitees, any notes, and all attachments. Please do not limit your search to Outlook calendars—we request the production of any calendar—paper or electronic, whether on government-issued or personal devices—used to track or coordinate how these individuals allocate their time on agency business.
2. Any logs or other records tracking incoming and outgoing telephone calls made by Scott Pruitt, Acting Deputy Administrator Mike Flynn, Acting Chief of Staff John Reeder, any political or SES appointees in the Office of the Administrator, or anyone placing or receiving telephone calls on behalf of those individuals.

Please provide all responsive records from February 17, 2017, to the date the search is conducted.

In addition to the records requested above, American Oversight also requests records describing the processing of this request, including records sufficient to identify search terms used and locations and custodians searched and any tracking sheets used to track the processing of this request. If your agency uses FOIA questionnaires or certifications completed by individual custodians or components to determine whether they possess responsive materials or to describe how they conducted searches, we also request any such records prepared in connection with the processing of this request.

American Oversight seeks all responsive records regardless of format, medium, or physical characteristics. In conducting your search, please understand the terms “record,” “document,” and “information” in their broadest sense, to include any written, typed, recorded, graphic, printed, or audio material of any kind. We seek records of any kind, including electronic records, audiotapes, videotapes, and photographs, as well as letters, emails, facsimiles, telephone messages, voice mail messages and transcripts, notes, or minutes of any meetings, telephone conversations or discussions. Our request includes any attachments to these records. No category of material should be omitted from search, collection, and production.

Please search all records regarding agency business. You may not exclude searches of files or emails in the personal custody of your officials, such as personal email accounts. Records of official business conducted using unofficial systems or stored outside of official files is subject to the

Federal Records Act and FOIA.⁴ It is not adequate to rely on policies and procedures that require officials to move such information to official systems within a certain period of time; American Oversight has a right to records contained in those files even if material has not yet been moved to official systems or if officials have, through negligence or willfulness, failed to meet their obligations.⁵

In addition, please note that in conducting a “reasonable search” as required by law, you must employ the most up-to-date technologies and tools available, in addition to searches by individual custodians likely to have responsive information. Recent technology may have rendered EPA prior FOIA practices unreasonable. In light of the government-wide requirements to manage information electronically by the end of 2016, it is no longer reasonable to rely exclusively on custodian-driven searches.⁶ Furthermore, agencies that have adopted the National Archives and Records Agency (NARA) Capstone program, or similar policies, now maintain emails in a form that is reasonably likely to be more complete than individual custodians’ files. For example, a custodian may have deleted a responsive email from his or her email program, but EPA’s archiving tools would capture that email under Capstone. Accordingly, American Oversight insists that EPA use the most up-to-date technologies to search for responsive information and take steps to ensure that the most complete repositories of information are searched. American Oversight is available to work with you to craft appropriate search terms. However, custodian searches are still required; agencies may not have direct access to files stored in .PST files, outside of network drives, in paper format, or in personal email accounts.

Under the FOIA Improvement Act of 2016, agencies must adopt a presumption of disclosure, withholding information “only if . . . disclosure would harm an interest protected by an exemption” or “disclosure is prohibited by law.”⁷ If it is your position that any portion of the requested records is exempt from disclosure, American Oversight requests that you provide an index of those documents as required under *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973), cert. denied, 415

⁴ See *Competitive Enter. Inst. v. Office of Sci. & Tech. Policy*, 827 F.3d 145, 149–50 (D.C. Cir. 2016); cf. *Judicial Watch, Inc. v. Kerry*, 844 F.3d 952, 955–56 (D.C. Cir. 2016).

⁵ See *Competitive Enter. Inst. v. Office of Sci. & Tech. Policy*, No. 14-cv-765, slip op. at 8 (D.D.C. Dec. 12, 2016) (“The Government argues that because the agency had a policy requiring [the official] to forward all of his emails from his [personal] account to his business email, the [personal] account only contains duplicate agency records at best. Therefore, the Government claims that any hypothetical deletion of the [personal account] emails would still leave a copy of those records intact in [the official’s] work email. However, policies are rarely followed to perfection by anyone. At this stage of the case, the Court cannot assume that each and every work-related email in the [personal] account was duplicated in [the official’s] work email account.” (citations omitted)).

⁶ Presidential Memorandum—Managing Government Records, 76 Fed. Reg. 75,423 (Nov. 28, 2011), <https://obamawhitehouse.archives.gov/the-press-office/2011/11/28/presidential-memorandum-managing-government-records>; Office of Mgmt. & Budget, Exec. Office of the President, Memorandum for the Heads of Executive Departments & Independent Agencies, “Managing Government Records Directive,” M-12-18 (Aug. 24, 2012), <https://www.archives.gov/files/records-mgmt/m-12-18.pdf>.

⁷ FOIA Improvement Act of 2016 § 2 (Pub. L. No. 114-185).

U.S. 977 (1974). As you are aware, a Vaughn index must describe each document claimed as exempt with sufficient specificity “to permit a reasoned judgment as to whether the material is actually exempt under FOIA.”⁸ Moreover, the Vaughn index “must describe each document or portion thereof withheld, and for each withholding it must discuss the consequences of disclosing the sought-after information.”⁹ Further, “the withholding agency must supply ‘a relatively detailed justification, specifically identifying the reasons why a particular exemption is relevant and correlating those claims with the particular part of a withheld document to which they apply.’”¹⁰

In the event some portions of the requested records are properly exempt from disclosure, please disclose any reasonably segregable non-exempt portions of the requested records. If it is your position that a document contains non-exempt segments, but that those non-exempt segments are so dispersed throughout the document as to make segregation impossible, please state what portion of the document is non-exempt, and how the material is dispersed throughout the document.¹¹ Claims of nonsegregability must be made with the same degree of detail as required for claims of exemptions in a Vaughn index. If a request is denied in whole, please state specifically that it is not reasonable to segregate portions of the record for release.

You should institute a preservation hold on information responsive to this request. American Oversight intends to pursue all legal avenues to enforce its right of access under FOIA, including litigation if necessary. Accordingly, EPA is on notice that litigation is reasonably foreseeable.

To ensure that this request is properly construed, that searches are conducted in an adequate but efficient manner, and that extraneous costs are not incurred, American Oversight welcomes an opportunity to discuss its request with you before you undertake your search or incur search or duplication costs. By working together at the outset, American Oversight and EPA can decrease the likelihood of costly and time-consuming litigation in the future.

Where possible, please provide responsive material in electronic format by email or in PDF or TIF format on a USB drive. Please send any responsive material being sent by mail to American Oversight, 1030 15th Street NW, Suite B255, Washington, DC 20005. If it will accelerate release of responsive records to American Oversight, please also provide responsive material on rolling basis.

Fee Waiver Request

In accordance with 5 U.S.C. § 552(a)(4)(A)(iii) and 40 C.F.R. § 2.107(l), American Oversight requests a waiver of fees associated with processing this request for records. The subject of this request concerns the operations of the federal government, and the disclosures will likely contribute to a better understanding of relevant government procedures by the general public in a

⁸ Founding Church of Scientology v. Bell, 603 F.2d 945, 949 (D.C. Cir. 1979).

⁹ King v. U.S. Dep’t of Justice, 830 F.2d 210, 223–24 (D.C. Cir. 1987) (emphasis in original).

¹⁰ Id. at 224 (citing Mead Data Central, Inc. v. U.S. Dep’t of the Air Force, 566 F.2d 242, 251 (D.C. Cir. 1977)).

¹¹ Mead Data Central, 566 F.2d at 261.

significant way.¹² Moreover, the request is primarily and fundamentally for non-commercial purposes.¹³

American Oversight requests a waiver of fees because disclosure of the requested information is “in the public interest because it is likely to contribute significantly to public understanding” of government.”¹⁴ The public interest in Mr. Icahn’s activities is evidenced by the Trump administration’s public announcement of his appointment, as well as the significant public attention since that time.¹⁵ The interest in how Mr. Pruitt is running the EPA given his conduct as Oklahoma Attorney General is plentiful.¹⁶ The American people deserve to know which outside individuals and groups are communicating with our nation’s top regulators. This request seeks information that will shed light on which interests are shaping our environmental policy.

This request is primarily and fundamentally for non-commercial purposes.¹⁷ As a 501(c)(3) nonprofit, American Oversight does not have a commercial purpose and the release of the information requested is not in American Oversight’s financial interest. American Oversight’s mission is to promote transparency in government, to educate the public about government activities, and to ensure the accountability of government officials. American Oversight will use the information gathered, and its analysis of it, to educate the public through reports, press releases, or other media. American Oversight will also make materials it gathers available on our public website and promote their availability on social media platforms, such as Facebook and Twitter.¹⁸ One example of American Oversight’s demonstrated public disclosure of documents and creation of editorial content is in its recently launched “Audit the Wall” effort, where the organization is gathering and analyzing information and commenting on public releases of information related to the administration’s proposed construction of a barrier along the U.S.-Mexico border.¹⁹

Accordingly, American Oversight qualifies for a fee waiver.

Conclusion

We share a common mission to promote transparency in government. American Oversight looks forward to working with your agency on this request. If you do not understand any part of this request, have any questions, or foresee any problems in fully releasing the requested records, please contact Sara Creighton at foia@americanoversight.org or (202) 869-5246. Also, if American

¹² 40 C.F.R. § 2.107(l)(1).

¹³ 40 C.F.R. § 2.107(l)(1).

¹⁴ 40 C.F.R. § 2.107(l)(2)(i)-(iv).

¹⁵ See, e.g., Isadore, *supra* note 2; Eric Lipton, Icahn Raises Ethics Flags With Dual Roles as Investor and Trump Adviser, N.Y. TIMES, Mar. 26, 2017, <https://www.nytimes.com/2017/03/26/us/politics/carl-icahn-trump-adviser-red-flags-ethics.html>.

¹⁶ See *supra* note 1.

¹⁷ 40 C.F.R. § 2.107(l)(3)(i)-(ii).

¹⁸ American Oversight currently has over 10,400 page likes on Facebook, and over 9,400 followers on Twitter. American Oversight, FACEBOOK, <https://www.facebook.com/weareoversight/> (last visited Apr. 3, 2017); American Oversight (@weareoversight), TWITTER (last visited Apr. 3, 2017).

¹⁹ Audit the Wall, AMERICAN OVERSIGHT, www.auditthewall.org (last visited Apr. 3, 2017).

Oversight's request for a fee waiver is not granted in full, please contact us immediately upon making such a determination.

Sincerely,

A handwritten signature in black ink, appearing to read "Austin R. Evers", with a long horizontal flourish extending to the left.

Austin R. Evers
Executive Director
American Oversight

Exhibit B



April 5, 2017

VIA ELECTRONIC MAIL

Records, FOIA, and Privacy Branch
Office of Environmental Information
Environmental Protection Agency
1200 Pennsylvania Avenue NW (2822T)
Washington, DC 20460
hq.foia@epa.gov

Re: Expedited Freedom of Information Act Request

Dear Freedom of Information Officer:

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552 et seq. and the implementing regulations for the Environmental Protection Agency (EPA), 40 C.F.R. Part 2, American Oversight makes the following request for records.

During his tenure as Oklahoma's Attorney General, Scott Pruitt reportedly used his official office as a conduit for industry interests to provide input into government decisionmaking, regularly consulting directly with fossil fuel firms regarding regulations affecting that industry.¹ Recent reports indicate that the Trump administration may be giving similar favored access and consideration to the fossil fuel industry: In recent months billionaire Carl Icahn has been serving as a special adviser to President Trump on regulatory matters,² and has reportedly provided input on certain environmental regulations that would significantly benefit his own company, CVR Energy Inc.³ Mr. Icahn reportedly has special access to the EPA on these matters.

¹ See, e.g., Coral Davenport & Eric Lipton, The Pruitt Emails: E.P.A. Chief Was Arm in Arm with Industry, N.Y. TIMES, Feb. 22, 2017, <https://www.nytimes.com/2017/02/22/us/politics/scott-pruitt-environmental-protection-agency.html>; Brady Dennis & Steven Mufson, Thousands of Emails Detail EPA Head's Close Ties to Fossil Fuel Industry, WASH. POST, Feb. 22, 2017, https://www.washingtonpost.com/news/energy-environment/wp/2017/02/22/oklahoma-attorney-generals-office-releases-7500-pages-of-emails-between-scott-pruitt-and-fossil-fuel-industry/?utm_term=.187c5a8084fb; Natasha Geiling, Scott Pruitt's Record Reveals a Long History of Industry Favoritism, THINKPROGRESS, Jan. 18, 2017, <https://thinkprogress.org/scott-pruitt-epa-oklahoma-record-386f13c8cc1d#.kfhqkxuwc>.

² Chris Isidore, Trump Taps Carl Icahn for Regulations Busting Post, CNNMONEY (Dec. 21, 2016, 5:36 PM), <http://money.cnn.com/2016/12/21/news/economy/donald-trump-carl-icahn/?iid=EL>.

³ See, e.g., Jennifer Dlouhy & Mario Parker, Trump Said to Consider Biofuel Plan Between Icahn, Ethanol Group, BLOOMBERG (Feb. 27, 2017, 8:50 PM),



American Oversight is seeking information to determine the scope of access Mr. Pruitt and the EPA have provided to industry groups and others with a stake in environmental regulation.

Requested Records

American Oversight requests that EPA produce the following within twenty business days and seeks expedited review of this request for the reasons identified below:

1. All communications between (1) any political or SES appointee in the Office of the Administrator (including but not limited to Scott Pruitt, Acting Deputy Administrator Mike Flynn, the Acting Chief of Staff John Reeder) or the Office of Air and Radiation (including but not limited to Acting Assistant Administrator Sarah Dunham), as well as anyone acting on behalf of those individuals, and (2) Carl Icahn; any individual acting on behalf of Mr. Icahn; any officer, director, or employee of Icahn Enterprises or CVR Energy, Inc.; or any individual acting on behalf of Icahn Enterprises or CVR Energy.
2. All communications between (1) any political or SES appointee in the Office of the Administrator (including but not limited to Scott Pruitt, Acting Deputy Administrator Mike Flynn, and Acting Chief of Staff John Reeder) or the Office of Air and Radiation (including but not limited to Acting Assistant Administrator Sarah Dunham), as well as anyone acting on behalf of those individuals, and (2) and any officer, director, or employee of Valero Energy or anyone acting on behalf of Valero Energy.

Please provide all responsive records from February 17, 2017, to the date the search is conducted.

In addition to the records requested above, American Oversight also requests records describing the processing of this request, including records sufficient to identify search terms used and locations and custodians searched and any tracking sheets used to track the processing of this request. If your agency uses FOIA questionnaires or certifications completed by individual custodians or components to determine whether they possess responsive materials or to describe how they conducted searches, we also request any such records prepared in connection with the processing of this request.

American Oversight seeks all responsive records regardless of format, medium, or physical characteristics. In conducting your search, please understand the terms "record," "document," and "information" in their broadest sense, to include any written, typed, recorded, graphic, printed, or audio material of any kind. We seek records of any kind, including electronic records, audiotapes, videotapes, and photographs, as well as letters, emails, facsimiles, telephone messages, voice mail messages and transcripts, notes, or minutes of any meetings, telephone conversations or discussions. Our request includes any attachments to these records. No category of material should be omitted from search, collection, and production.

<https://www.bloomberg.com/news/articles/2017-02-28/trump-said-to-consider-biofuel-plan-between-icahn-ethanol-group>.

Please search all records regarding agency business. You may not exclude searches of files or emails in the personal custody of your officials, such as personal email accounts. Records of official business conducted using unofficial systems or stored outside of official files is subject to the Federal Records Act and FOIA.⁴ It is not adequate to rely on policies and procedures that require officials to move such information to official systems within a certain period of time; American Oversight has a right to records contained in those files even if material has not yet been moved to official systems or if officials have, through negligence or willfulness, failed to meet their obligations.⁵

In addition, please note that in conducting a “reasonable search” as required by law, you must employ the most up-to-date technologies and tools available, in addition to searches by individual custodians likely to have responsive information. Recent technology may have rendered EPA prior FOIA practices unreasonable. In light of the government-wide requirements to manage information electronically by the end of 2016, it is no longer reasonable to rely exclusively on custodian-driven searches.⁶ Furthermore, agencies that have adopted the National Archives and Records Agency (NARA) Capstone program, or similar policies, now maintain emails in a form that is reasonably likely to be more complete than individual custodians’ files. For example, a custodian may have deleted a responsive email from his or her email program, but EPA’s archiving tools would capture that email under Capstone. Accordingly, American Oversight insists that EPA use the most up-to-date technologies to search for responsive information and take steps to ensure that the most complete repositories of information are searched. American Oversight is available to work with you to craft appropriate search terms. However, custodian searches are still required; agencies may not have direct access to files stored in .PST files, outside of network drives, in paper format, or in personal email accounts.

Under the FOIA Improvement Act of 2016, agencies must adopt a presumption of disclosure, withholding information “only if . . . disclosure would harm an interest protected by an exemption”

⁴ See *Competitive Enter. Inst. v. Office of Sci. & Tech. Policy*, 827 F.3d 145, 149–50 (D.C. Cir. 2016); cf. *Judicial Watch, Inc. v. Kerry*, 844 F.3d 952, 955–56 (D.C. Cir. 2016).

⁵ See *Competitive Enter. Inst. v. Office of Sci. & Tech. Policy*, No. 14-cv-765, slip op. at 8 (D.D.C. Dec. 12, 2016) (“The Government argues that because the agency had a policy requiring [the official] to forward all of his emails from his [personal] account to his business email, the [personal] account only contains duplicate agency records at best. Therefore, the Government claims that any hypothetical deletion of the [personal account] emails would still leave a copy of those records intact in [the official’s] work email. However, policies are rarely followed to perfection by anyone. At this stage of the case, the Court cannot assume that each and every work-related email in the [personal] account was duplicated in [the official’s] work email account.” (citations omitted)).

⁶ Presidential Memorandum—Managing Government Records, 76 Fed. Reg. 75,423 (Nov. 28, 2011), <https://obamawhitehouse.archives.gov/the-press-office/2011/11/28/presidential-memorandum-managing-government-records>; Office of Mgmt. & Budget, Exec. Office of the President, Memorandum for the Heads of Executive Departments & Independent Agencies, “Managing Government Records Directive,” M-12-18 (Aug. 24, 2012), <https://www.archives.gov/files/records-mgmt/m-12-18.pdf>.

or “disclosure is prohibited by law.”⁷ If it is your position that any portion of the requested records is exempt from disclosure, American Oversight requests that you provide an index of those documents as required under *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973), cert. denied, 415 U.S. 977 (1974). As you are aware, a Vaughn index must describe each document claimed as exempt with sufficient specificity “to permit a reasoned judgment as to whether the material is actually exempt under FOIA.”⁸ Moreover, the Vaughn index “must describe each document or portion thereof withheld, and for each withholding it must discuss the consequences of disclosing the sought-after information.”⁹ Further, “the withholding agency must supply ‘a relatively detailed justification, specifically identifying the reasons why a particular exemption is relevant and correlating those claims with the particular part of a withheld document to which they apply.’”¹⁰

In the event some portions of the requested records are properly exempt from disclosure, please disclose any reasonably segregable non-exempt portions of the requested records. If it is your position that a document contains non-exempt segments, but that those non-exempt segments are so dispersed throughout the document as to make segregation impossible, please state what portion of the document is non-exempt, and how the material is dispersed throughout the document.¹¹ Claims of nonsegregability must be made with the same degree of detail as required for claims of exemptions in a Vaughn index. If a request is denied in whole, please state specifically that it is not reasonable to segregate portions of the record for release.

You should institute a preservation hold on information responsive to this request. American Oversight intends to pursue all legal avenues to enforce its right of access under FOIA, including litigation if necessary. Accordingly, EPA is on notice that litigation is reasonably foreseeable.

To ensure that this request is properly construed, that searches are conducted in an adequate but efficient manner, and that extraneous costs are not incurred, American Oversight welcomes an opportunity to discuss its request with you before you undertake your search or incur search or duplication costs. By working together at the outset, American Oversight and EPA can decrease the likelihood of costly and time-consuming litigation in the future.

Where possible, please provide responsive material in electronic format by email or in PDF or TIF format on a USB drive. Please send any responsive material being sent by mail to American Oversight, 1030 15th Street NW, Suite B255, Washington, DC 20005. If it will accelerate release of responsive records to American Oversight, please also provide responsive material on rolling basis.

⁷ FOIA Improvement Act of 2016 § 2 (Pub. L. No. 114–185).

⁸ *Founding Church of Scientology v. Bell*, 603 F.2d 945, 949 (D.C. Cir. 1979).

⁹ *King v. U.S. Dep’t of Justice*, 830 F.2d 210, 223–24 (D.C. Cir. 1987) (emphasis in original).

¹⁰ *Id.* at 224 (citing *Mead Data Central, Inc. v. U.S. Dep’t of the Air Force*, 566 F.2d 242, 251 (D.C. Cir. 1977)).

¹¹ *Mead Data Central*, 566 F.2d at 261.

Fee Waiver Request

In accordance with 5 U.S.C. § 552(a)(4)(A)(iii) and 40 C.F.R. § 2.107(l), American Oversight requests a waiver of fees associated with processing this request for records. The subject of this request concerns the operations of the federal government, and the disclosures will likely contribute to a better understanding of relevant government procedures by the general public in a significant way.¹² Moreover, the request is primarily and fundamentally for non-commercial purposes.¹³

American Oversight requests a waiver of fees because disclosure of the requested information is “in the public interest because it is likely to contribute significantly to public understanding” of government.”¹⁴ The public interest in Mr. Icahn’s activities is evidenced by the Trump administration’s public announcement of his appointment, as well as the significant public attention since that time.¹⁵ The interest in how Mr. Pruitt is running the EPA given his conduct as Oklahoma Attorney General is plentiful.¹⁶ The American people deserve to know which outside individuals and groups are communicating with our nation’s top regulators. This request seeks information that will shed light on which interests are shaping our environmental policy.

This request is primarily and fundamentally for non-commercial purposes.¹⁷ As a 501(c)(3) nonprofit, American Oversight does not have a commercial purpose and the release of the information requested is not in American Oversight’s financial interest. American Oversight’s mission is to promote transparency in government, to educate the public about government activities, and to ensure the accountability of government officials. American Oversight will use the information gathered, and its analysis of it, to educate the public through reports, press releases, or other media. American Oversight will also make materials it gathers available on our public website and promote their availability on social media platforms, such as Facebook and Twitter.¹⁸ One example of American Oversight’s demonstrated public disclosure of documents and creation of editorial content is in its recently launched “Audit the Wall” effort, where the organization is gathering and analyzing information and commenting on public releases of information related to the administration’s proposed construction of a barrier along the U.S.-Mexico border.¹⁹

Accordingly, American Oversight qualifies for a fee waiver.

¹² 40 C.F.R. § 2.107(l)(1).

¹³ 40 C.F.R. § 2.107(l)(1).

¹⁴ 40 C.F.R. § 2.107(l)(2)(i)-(iv).

¹⁵ See, e.g., Isadore, *supra* note 2; Eric Lipton, Icahn Raises Ethics Flags With Dual Roles as Investor and Trump Adviser, N.Y. TIMES, Mar. 26, 2017, <https://www.nytimes.com/2017/03/26/us/politics/carl-icahn-trump-adviser-red-flags-ethics.html>.

¹⁶ See *supra* note 1.

¹⁷ 40 C.F.R. § 2.107(l)(3)(i)-(ii).

¹⁸ American Oversight currently has over 10,400 page likes on Facebook, and over 9,400 followers on Twitter. American Oversight, FACEBOOK, <https://www.facebook.com/weareoversight/> (last visited Apr. 3, 2017); American Oversight (@weareoversight), TWITTER (last visited Apr. 3, 2017).

¹⁹ Audit the Wall, AMERICAN OVERSIGHT, www.auditthewall.org (last visited Apr. 3, 2017).

Application for Expedited Processing

Pursuant to 5 U.S.C. § 552(a)(6)(E)(1) and 40 C.F.R. § 2.104(e), American Oversight requests that EPA expedite the processing of this request.

I certify to be true and correct to the best of my knowledge and belief, that there is an urgent need to inform the public about the federal government activity that is the subject of this request. President Trump just announced plans to dismantle many environmental regulations passed under the Obama administration.²⁰ There will therefore be extensive (de)regulatory activity at the EPA in the months to come, and the public deserves to know which interests will be involved in shaping that process.

I further certify that American Oversight is primarily engaged in disseminating information to the public. American Oversight's mission is to promote transparency in government, to educate the public about government activities, and to ensure the accountability of government officials. Similar to other organizations that have been found to satisfy the criteria necessary to qualify for expedition,²¹ American Oversight “gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw material into a distinct work, and distributes that work to an audience.”²² American Oversight will use the information gathered, and its analysis of it, to educate the public through reports, press releases, and other media. American Oversight will also make materials it gathers available on our public website and promote their availability on social media platforms, such as Facebook and Twitter.²³ One example of American Oversight's demonstrated public disclosure of documents and creation of editorial content is in its recently launched “Audit the Wall” effort, where the organization is gathering and analyzing information and commenting on public releases of information related to the administration's proposed construction of a barrier along the U.S.-Mexico border.²⁴

Accordingly, American Oversight's request satisfies the criteria for expedition.

Conclusion

We share a common mission to promote transparency in government. American Oversight looks forward to working with your agency on this request. If you do not understand any part of this request, have any questions, or foresee any problems in fully releasing the requested records, please contact Sara Creighton at foia@americanoversight.org or (202) 869-5246. Also, if American

²⁰ See, e.g., Jacqueline Alemany, Trump Executive Order Will Dismantle Obama Environmental Regulations, CBSNEWS (Mar. 27, 2017, 11:40PM), <http://www.cbsnews.com/news/trump-executive-order-will-dismantle-obama-environmental-regulations/>.

²¹ See ACLU v. U.S. Dep't of Justice, 321 F. Supp. 2d 24, 30–31 (D.D.C. 2004); EPIC v. Dep't of Defense, 241 F. Supp. 2d 5, 15 (D.D.C. 2003).

²² ACLU, 321 F. Supp. 2d at 29 n.5 (quoting EPIC, 241 F. Supp. 2d at 11).

²³ American Oversight currently has over 10,400 page likes on Facebook, and over 9,400 followers on Twitter. American Oversight, FACEBOOK, <https://www.facebook.com/weareoversight/> (last visited Apr. 3, 2017); American Oversight (@weareoversight), TWITTER (last visited Apr. 3, 2017).

²⁴ Audit the Wall, AMERICAN OVERSIGHT, www.auditthewall.org (last visited Apr. 3, 2017).

Oversight's request for a fee waiver is not granted in full, please contact us immediately upon making such a determination.

Sincerely,

A handwritten signature in black ink, appearing to read "Austin R. Evers", with a long horizontal flourish extending to the left.

Austin R. Evers
Executive Director
American Oversight

ATTACHMENT E**CIVIL COVER SHEET**

JS-44 (Rev. 3/16 DC)

I. (a) PLAINTIFFS American Oversight (b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF <u>11001</u> (EXCEPT IN U.S. PLAINTIFF CASES) (c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER) Sara Kaiser Creighton American Oversight, 1030 15th Street NW, B255 Washington, DC 20005 202.869.5246	DEFENDANTS U.S. Environmental Protection Agency COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT _____ (IN U.S. PLAINTIFF CASES ONLY) <small>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED</small>																								
II. BASIS OF JURISDICTION (PLACE AN x IN ONE BOX ONLY) <input type="radio"/> 1 U.S. Government Plaintiff <input type="radio"/> 3 Federal Question (U.S. Government Not a Party) <input checked="" type="radio"/> 2 U.S. Government Defendant <input type="radio"/> 4 Diversity (Indicate Citizenship of Parties in item III)	III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN x IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT) FOR DIVERSITY CASES ONLY! <table style="width: 100%; border: none;"> <thead> <tr> <th></th> <th style="text-align: center;">PTF</th> <th style="text-align: center;">DFT</th> <th></th> <th style="text-align: center;">PTF</th> <th style="text-align: center;">DFT</th> </tr> </thead> <tbody> <tr> <td>Citizen of this State</td> <td style="text-align: center;"><input type="radio"/> 1</td> <td style="text-align: center;"><input type="radio"/> 1</td> <td>Incorporated or Principal Place of Business in This State</td> <td style="text-align: center;"><input type="radio"/> 4</td> <td style="text-align: center;"><input type="radio"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td style="text-align: center;"><input type="radio"/> 2</td> <td style="text-align: center;"><input type="radio"/> 2</td> <td>Incorporated and Principal Place of Business in Another State</td> <td style="text-align: center;"><input type="radio"/> 5</td> <td style="text-align: center;"><input type="radio"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td style="text-align: center;"><input type="radio"/> 3</td> <td style="text-align: center;"><input type="radio"/> 3</td> <td>Foreign Nation</td> <td style="text-align: center;"><input type="radio"/> 6</td> <td style="text-align: center;"><input type="radio"/> 6</td> </tr> </tbody> </table>		PTF	DFT		PTF	DFT	Citizen of this State	<input type="radio"/> 1	<input type="radio"/> 1	Incorporated or Principal Place of Business in This State	<input type="radio"/> 4	<input type="radio"/> 4	Citizen of Another State	<input type="radio"/> 2	<input type="radio"/> 2	Incorporated and Principal Place of Business in Another State	<input type="radio"/> 5	<input type="radio"/> 5	Citizen or Subject of a Foreign Country	<input type="radio"/> 3	<input type="radio"/> 3	Foreign Nation	<input type="radio"/> 6	<input type="radio"/> 6
	PTF	DFT		PTF	DFT																				
Citizen of this State	<input type="radio"/> 1	<input type="radio"/> 1	Incorporated or Principal Place of Business in This State	<input type="radio"/> 4	<input type="radio"/> 4																				
Citizen of Another State	<input type="radio"/> 2	<input type="radio"/> 2	Incorporated and Principal Place of Business in Another State	<input type="radio"/> 5	<input type="radio"/> 5																				
Citizen or Subject of a Foreign Country	<input type="radio"/> 3	<input type="radio"/> 3	Foreign Nation	<input type="radio"/> 6	<input type="radio"/> 6																				

IV. CASE ASSIGNMENT AND NATURE OF SUIT

(Place an X in one category, A-N, that best represents your Cause of Action and one in a corresponding Nature of Suit)

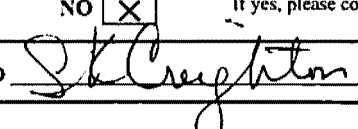
<input type="radio"/> A. Antitrust <input type="checkbox"/> 410 Antitrust	<input type="radio"/> B. Personal Injury/Malpractice <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Medical Malpractice <input type="checkbox"/> 365 Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Product Liability	<input type="radio"/> C. Administrative Agency Review <input type="checkbox"/> 151 Medicare Act <u>Social Security</u> <input type="checkbox"/> 861 HIA (1395m) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <u>Other Statutes</u> <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 890 Other Statutory Actions (If Administrative Agency is Involved)	<input type="radio"/> D. Temporary Restraining Order/Preliminary Injunction Any nature of suit from any category may be selected for this category of case assignment. *(If Antitrust, then A governs)*
<input type="radio"/> E. General Civil (Other) OR <input type="radio"/> F. Pro Se General Civil			
<u>Real Property</u> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent, Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property <u>Personal Property</u> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<u>Bankruptcy</u> <input type="checkbox"/> 422 Appeal 27 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <u>Prisoner Petitions</u> <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Conditions <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement <u>Property Rights</u> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <u>Federal Tax Suits</u> <input type="checkbox"/> 870 Taxes (US plaintiff or defendant) <input type="checkbox"/> 871 IRS-Third Party 26 USC 7609	<u>Forfeiture/Penalty</u> <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <u>Other Statutes</u> <input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 430 Banks & Banking Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 470 Racketeer Influenced & Corrupt Organization <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Satellite TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions (if not administrative agency review or Privacy Act)

<input type="radio"/> G. Habeas Corpus/ 2255 <input type="checkbox"/> 530 Habeas Corpus – General <input type="checkbox"/> 510 Motion/Vacate Sentence <input type="checkbox"/> 463 Habeas Corpus – Allen Detainee	<input type="radio"/> H. Employment Discrimination <input type="checkbox"/> 442 Civil Rights – Employment (criteria: race, gender/sex, national origin, discrimination, disability, age, religion, retaliation) *(If pro se, select this deck)*	<input checked="" type="radio"/> I. FOIA/Privacy Act <input checked="" type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 890 Other Statutory Actions (if Privacy Act) *(If pro se, select this deck)*	<input type="radio"/> J. Student Loan <input type="checkbox"/> 152 Recovery of Defaulted Student Loan (excluding veterans)
<input type="radio"/> K. Labor/ERISA (non-employment) <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 740 Labor Railway Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="radio"/> L. Other Civil Rights (non-employment) <input type="checkbox"/> 441 Voting (if not Voting Rights Act) <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 445 Americans w/Disabilities – Employment <input type="checkbox"/> 446 Americans w/Disabilities – Other <input type="checkbox"/> 448 Education	<input type="radio"/> M. Contract <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholder's Suits <input type="checkbox"/> 190 Other Contracts <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<input type="radio"/> N. Three-Judge Court <input type="checkbox"/> 441 Civil Rights – Voting (if Voting Rights Act)

V. ORIGIN
☒ 1 Original Proceeding
 ☐ 2 Removed from State Court
 ☐ 3 Remanded from Appellate Court
 ☐ 4 Reinstated or Reopened
 ☐ 5 Transferred from another district (specify)
 ☐ 6 Multi-district Litigation
 ☐ 7 Appeal to District Judge from Mag. Judge

VI. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE.)
 5 U.S.C. 552. Defendant has failed to provide responsive records to a FOIA request.

VII. REQUESTED IN COMPLAINT	CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 <input type="checkbox"/>	DEMAND \$	JURY DEMAND: YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>
VIII. RELATED CASE(S) IF ANY	(See instruction)	YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	If yes, please complete related case form

DATE: 6/27/2017	SIGNATURE OF ATTORNEY OF RECORD: 
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INSTRUCTIONS FOR COMPLETING CIVIL COVER SHEET JS-44
 Authority for Civil Cover Sheet

The JS-44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and services of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. Listed below are tips for completing the civil cover sheet. These tips coincide with the Roman Numerals on the cover sheet.

- I. COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF/DEFENDANT (b) County of residence: Use 11001 to indicate plaintiff if resident of Washington, DC, 88888 if plaintiff is resident of United States but not Washington, DC, and 99999 if plaintiff is outside the United States.
- III. CITIZENSHIP OF PRINCIPAL PARTIES: This section is completed only if diversity of citizenship was selected as the Basis of Jurisdiction under Section II.
- IV. CASE ASSIGNMENT AND NATURE OF SUIT: The assignment of a judge to your case will depend on the category you select that best represents the primary cause of action found in your complaint. You may select only one category. You must also select one corresponding nature of suit found under the category of the case.
- VI. CAUSE OF ACTION: Cite the U.S. Civil Statute under which you are filing and write a brief statement of the primary cause.
- VIII. RELATED CASE(S), IF ANY: If you indicated that there is a related case, you must complete a related case form, which may be obtained from the Clerk's Office.

Because of the need for accurate and complete information, you should ensure the accuracy of the information provided prior to signing the form.

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

CLEAR FORM

American Oversight

Plaintiff

v.

U.S. Environmental Protection Agency

Defendant

)
)
)
)
)
)
)

Civil Action No. _____

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)*

Channing D. Phillips
U.S. Attorney for the District of Columbia
555 4th Street NW
Washington, DC 20530

A lawsuit has been filed against you.

Within 30 days after service of this summons on you (not counting the day you received it) you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Sara Creighton
American Oversight
1030 15th Street NW, B255
Washington, DC 20005

If you fail to respond, judgment by default may be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

ANGELA D. CAESAR, CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* _____
 was received by me on *(date)* _____.

' I personally served the summons on the individual at *(place)* _____
 _____ on *(date)* _____; or

' I left the summons at the individual's residence or usual place of abode with *(name)* _____
 _____, a person of suitable age and discretion who resides there,
 on *(date)* _____, and mailed a copy to the individual's last known address; or

' I served the summons on *(name of individual)* _____, who is
 designated by law to accept service of process on behalf of *(name of organization)* _____
 _____ on *(date)* _____; or

' I returned the summons unexecuted because _____; or

' Other *(specify)*: _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

Print

Save As...

Reset

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

CLEAR FORM

American Oversight

Plaintiff

v.

U.S. Environmental Protection Agency

Defendant

)
)
)
)
)
)
)

Civil Action No. _____

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)*

Jeff Sessions
United States Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue NW
Washington, DC 20530

A lawsuit has been filed against you.

Within 30 days after service of this summons on you (not counting the day you received it) you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Sara Creighton
American Oversight
1030 15th Street NW, B255
Washington, DC 20005

If you fail to respond, judgment by default may be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

ANGELA D. CAESAR, CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* _____
 was received by me on *(date)* _____.

' I personally served the summons on the individual at *(place)* _____
 _____ on *(date)* _____; or

' I left the summons at the individual's residence or usual place of abode with *(name)* _____
 _____, a person of suitable age and discretion who resides there,
 on *(date)* _____, and mailed a copy to the individual's last known address; or

' I served the summons on *(name of individual)* _____, who is
 designated by law to accept service of process on behalf of *(name of organization)* _____
 _____ on *(date)* _____; or

' I returned the summons unexecuted because _____; or

' Other *(specify)*: _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

Print

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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

CLEAR FORM

American Oversight

Plaintiff

v.

U.S. Environmental Protection Agency

Defendant

)
)
)
)
)
)
)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)*

U.S. Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington, DC 20460

A lawsuit has been filed against you.

Within 30 days after service of this summons on you (not counting the day you received it) you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Sara Creighton
American Oversight
1030 15th Street NW, B255
Washington, DC 20005

If you fail to respond, judgment by default may be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

ANGELA D. CAESAR, CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* _____
 was received by me on *(date)* _____.

' I personally served the summons on the individual at *(place)* _____
 _____ on *(date)* _____; or

' I left the summons at the individual's residence or usual place of abode with *(name)* _____
 _____, a person of suitable age and discretion who resides there,
 on *(date)* _____, and mailed a copy to the individual's last known address; or

' I served the summons on *(name of individual)* _____, who is
 designated by law to accept service of process on behalf of *(name of organization)* _____
 _____ on *(date)* _____; or

' I returned the summons unexecuted because _____; or

' Other *(specify)*: _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

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